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House Bill 6413
Human Services Committee
Public Hearing: 2/19/13

The Connecticut Bar Association Elder Law Section respectfully **OPPOSES HB 6413 – AAC Medicaid Eligibility and the Identification and Recovery of Assets**

Subsection 2(b) of HB 6413 provides in part:

> "*If the* [DSS] *Commissioner of Social Services, based on sufficient evidence, determines that the assets were wilfully transferred for the purpose of obtaining or maintaining eligibility for medical assistance, the Commissioner of Social Services may assess a monetary penalty up to double the amount of debt against the transferor and any transferee who had knowledge of such purpose. Such transferor and transferee shall share joint and several liability. … Not later than January 1, 2014, the Commissioner shall issue a request for information for debt collection services to collect money owed to nursing facilities for debts established under this subsection. …"* (emphasis added).

We respectfully OPPOSE Subsection 2(b) because it provides very broad powers to the DSS Commissioner to potentially "double the amount of debt" that could be assessed against family members. For example, if a grandchild had received money from his/her grandparent –which money was used to pay for the grandchild's college tuition—then this provision could deem the grandchild to be "jointly and severally liable" for up to double the amount that the grandchild received from his/her grandparent. This is a harsh penalty. The provision does state that the assets had to be transferred "wilfully" for the purpose of obtaining or maintaining eligibility for medical assistance – but again, this decision about what is "wilful" is determined solely by the DSS Commissioner; and it is often extremely difficult for families to "prove the negative."

The Federal Medicaid Law under 42 USC §1396p(c) provides that if a transfer of assets is made that results in a penalty, then the penalty would be a period of ineligibility for benefits that is calculated based upon the value of the transferred assets. The existing Connecticut law under §17b-261a that creates a "debt" does not comport with the Federal statute, and furthermore, the proposal in HB 6413 to add text to §17b-261a that would "double the debt" even further deviates from the Federal Statute. In other words, the Federal statute provides that the penalty should be a "period of ineligibility" -- not "debts" and "double debts" that can be assessed against family members (we have attached the relevant text of the Federal Medicaid law, 42 USC §1396p(c), on the following page).

Subsection 2(b) of HB 6413 also establishes a "request for information" process that appears to allow the DSS Commissioner to hire outside "debt collection services" on behalf of nursing homes to recover money from families. We respectfully contend that it would be very unique for the Legislature to grant power to a state agency to hire outside debt collector companies to collect the debts of private entities, such as nursing homes.

Additionally, Section 3 of House Bill 6413 establishes a brand new legal action in court for nursing homes to file lawsuits against family members who had knowledge that the transfer was made for the purpose of obtaining or maintaining eligibility for medical assistance. This provision states that if the court makes certain findings – including the vague finding of a "material misrepresentation or omission concerning such assets" – then the court may assess double damages. Again, this is a very harsh penalty.

Section 4(b) provides another new provision allowing a court to "double the damages" relating to applied income. We respectfully oppose this proposal for the reasons set forth above.

We respectfully contend that HB 6413 improperly exposes older adults and their families to lawsuits and to harsh penalties; and the proposal -- juxtaposed with the current state statute §17b-261a -- does not square with the Federal Medicaid law. Please OPPOSE HB 6413.

RELEVANT PROVISIONS OF THE FEDERAL MEDICAID LAW, 42 USC §1396(c)

(c) Taking into account certain transfers of assets

(1)(E)(i) With respect to an institutionalized individual, the ***number of months of ineligibility*** under this subparagraph for an individual shall be equal to ……..

(4) A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual ***which results in a period of ineligibility*** for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.